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7 LYFT, INC.,  
8 Plaintiff,  
9 v.  
10 AGIS SOFTWARE DEVELOPMENT LLC,  
11 Defendant.

Case No. 21-cv-04653-BLF

**ORDER GRANTING PLAINTIFF  
LYFT, INC.’S MOTION FOR LEAVE  
TO FILE FIRST AMENDED  
COMPLAINT**

12 [Re: ECF No. 78]  
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Before the Court is Plaintiff Lyft, Inc.’s (“Lyft”) motion for leave to file a first amended complaint in this patent declaratory judgment action against AGIS Software Development LLC (“AGIS Software”). Lyft seeks to add three new parties—Advanced Ground Information Systems, Inc. (“AGIS, Inc.”); AGIS Holdings, Inc. (“AGIS Holdings”); and Malcolm K. Beyer, Jr. (collectively, the “Proposed Parties”—and a breach of contract claim in its first amended complaint. *See Motion*, ECF No. 78. AGIS Software opposes. *See Opposition*, ECF No. 94.

Pursuant to Civil Local Rule 7-1(b), the Court finds that Lyft’s motion is appropriate for determination without oral argument. Based on the below reasoning, the Court GRANTS Lyft’s motion.

**I. BACKGROUND**

On January 29, 2021, AGIS Software filed a patent infringement action against Lyft in the Eastern District of Texas regarding the Patents-in-Suit based on “the Lyft and Lyft Driver applications and the related services and/or servers for the applications.” *See Complaint*, ECF No. 1 ¶ 4. The case was consolidated with other AGIS Software cases under the caption *AGIS Software Dev. LLC v. T-Mobile USA, Inc.*, No. 2:21-cv-00072-JRG-RSP (E.D. Tex.) (“E.D. Texas Action”).

1 On January 19, 2022, Judge Gilstrap dismissed Lyft from the case for improper venue. *See*  
2 E.D. Texas Action, ECF No. 334.

3 On June 16, 2021, while AGIS Software’s Eastern District of Texas action against Lyft was  
4 still pending, Lyft filed the present action for declaratory judgment of noninfringement of the same  
5 patents asserted against it in the E.D. Texas Action. *See* Complaint, ECF No. 1. On January 28,  
6 2022, the Court dismissed Lyft’s complaint for lack of personal jurisdiction with leave to amend.  
7 *See* Order, ECF No. 61. The Court further granted Lyft’s request for jurisdictional discovery in the  
8 form of five interrogatories and one four-hour Rule 30(b)(6) deposition. *See id.* at 10. Additionally,  
9 the Court ordered that Lyft could not add any new claims or new parties to any amended complaint  
10 without the leave of the Court or a stipulation with AGIS Software. *See id.*

11 On March 28, 2022, Lyft filed a motion for leave to file a first amended complaint, seeking  
12 to (1) add the Proposed Parties and (2) add a breach of contract claim against AGIS Software and  
13 the Proposed Parties. *See* Motion, ECF No. 78. Lyft seeks to add the Proposed Parties because it  
14 argues that jurisdictional discovery has indicated that the Proposed Parties are alter egos of AGIS  
15 Software. *See id.* at 4–5. The breach of contract claim is based on AGIS Software’s alleged breach  
16 of [REDACTED] by  
17 accusing the Lyft application installed on [REDACTED] devices in the E.D. Texas Action and the present case.  
18 *See* Proposed First Amended Complaint, ECF No. 2 ¶¶ 213–237. AGIS Software opposes, arguing  
19 that (1) the evidence does not indicate the Proposed Parties are alter egos of AGIS Software and  
20 (2) Lyft was dilatory in seeking to add its breach of contract claim, which is moot based on AGIS  
21 Software’s pending motion to amend its infringement contentions. *See* Opposition, ECF No. 94  
22 at 4–8.

23 **II. LEGAL STANDARD**

24 Under Federal Rule of Civil Procedure 15, “a party may amend its pleading only with the  
25 opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). “The court should  
26 freely give leave when justice so requires.” *Id.* A district court ordinarily must grant leave to amend  
27 unless one or more of the following “*Foman* factors” is present: (1) undue delay, (2) bad faith or  
28 dilatory motive, (3) repeated failure to cure deficiencies by amendment, (4) undue prejudice to the

1 opposing party, or (5) futility of amendment. *See Eminence Capital, LLC v. Aspeon, Inc.*,  
2 316 F.3d 1048, 1052 (9th Cir. 2003) (citing *Foman v. Davis*, 37 U.S. 178, 182 (1962)). “[I]t is the  
3 consideration of prejudice to the opposing party that carries the greatest weight.” *Id.* However, a  
4 strong showing with respect to one of the other factors may warrant denial of leave to amend. *Id.*

### 5 **III. DISCUSSION**

6 Lyft seeks leave to (1) add the Proposed Parties and (2) add a breach of contract claim to its  
7 first amended complaint. *See* Motion, ECF No. 78. AGIS Software opposes each request. *See*  
8 Opposition, ECF No. 94. The Court will consider each issue in turn.

#### 9 **A. Leave to Add Proposed Parties**

10 Lyft argues that adding the Proposed Parties is warranted because (1) they have opposed  
11 Lyft’s discovery requests on the basis that they are not parties to the present suit and  
12 (2) jurisdictional discovery has shown that [REDACTED]  
13 [REDACTED], so AGIS Software may seek to avoid liability [REDACTED]  
14 [REDACTED]. *See* Motion, ECF No. 78 at 4–5 (citing Salpietra Decl., ECF No. 78-1, Ex. 7 at 12–17; *id.*,  
15 Ex. 11 at 144:7–8). Lyft also argues that jurisdictional discovery has revealed facts indicating that  
16 the Proposed Parties are alter egos of AGIS Software, including shared office space and [REDACTED],  
17 [REDACTED], and AGIS Software’s undercapitalization. *See* Reply, ECF No. 107  
18 at 4–7. In response, AGIS Software argues that the evidence shows that AGIS Software paid for  
19 the Proposed Parties’ services—it does not indicate [REDACTED] or undercapitalization. *See*  
20 Opposition, ECF No. 94 at 4–6. Further, AGIS Software argues that the evidence indicates that  
21 AGIS Software, AGIS Holdings, and AGIS, Inc. are separate and distinct business entities—for  
22 instance, they have different [REDACTED]. *See* *id.* at 6–7.

23 The Court agrees with Lyft. AGIS Software’s only objections to Lyft’s motion are directed  
24 to the merits of Lyft’s alter ego case. In other words, AGIS Software appears to be arguing that  
25 Lyft’s proposed amendment would be futile, because Lyft cannot show that the Proposed Parties  
26 are alter egos of AGIS Software. AGIS Software has failed to show that addition of the Proposed  
27 Parties would be futile. Lyft has raised facts indicating significant [REDACTED]  
28 [REDACTED]. *See* Salpietra Decl., ECF No. 78-1, Ex. 7 at 12–17;

1        *id.*, Ex. 11 at 144:7–8. Further, Lyft points to facts indicating [REDACTED]  
2 [REDACTED], shared office space, and shared [REDACTED]. *See* Salpietra  
3 Reply Decl., ECF No. 107-1, Ex. 13 at 12:22–13:24, 24:1–32:21, 36:11–43:15, 119:9–128:10,  
4 134:19–135:14; *id.*, Exs. 14–16. Based on the evidence, the Court finds that it cannot say there is  
5 “no set of facts [that] can be proved under the amendment to the pleadings that would constitute a  
6 valid and sufficient claim” against the Proposed Parties. *Missouri ex rel. Koster v. Harris*,  
7 847 F.3d 646, 656 (9th Cir. 2017) (citations omitted). Without a sufficient showing as to any of the  
8 *Foman* factors, the Court finds that leave to amend regarding the Proposed Parties is appropriate.  
9 *See Foman*, 371 U.S. at 182.

10        Accordingly, the Court GRANTS Lyft leave to add the Proposed Parties in the first amended  
11 complaint.

12        **B. Leave to Add Breach of Contract Claim**

13        Lyft argues that the Court should grant it leave to add the breach of contract claim because  
14 it previously asserted the claim in the E.D. Texas Action, and Lyft was not dismissed from that case  
15 until January 2022. *See* Motion, ECF No. 78 at 5–6. Further, Lyft argues that it waited to bring its  
16 breach of contract claim in this case because AGIS Software has objected to Lyft using any protected  
17 information from the E.D. Texas Action in this case, and [REDACTED]

18 [REDACTED]. *See* Reply, ECF No. 107 at 7–8. In  
19 response, AGIS Software argues that Lyft was dilatory in asserting the breach of contract claim in  
20 this action, since Lyft waited until April 2022—nearly six months after originally asserting the claim  
21 in the E.D. Texas Action in November 2021. *See* Opposition, ECF No. 94 at 7–8. Further, AGIS  
22 Software argues that Lyft’s breach of contract claim is mooted by AGIS Software’s pending motion  
23 to amend its infringement contentions at ECF No. 84, which Lyft opposes. *See id.* at 7. AGIS  
24 Software’s motion to amend its infringement contentions seeks to “mak[e] clear” that it is not  
25 alleging infringement of “any Lyft iOS-based application” or “any Apple products.” *See*  
26 Opposition, ECF No. 94 at 7 (quoting ECF No. 84-8 at 2 n.1). On reply, Lyft argues that regardless  
27 of the outcome of AGIS Software’s motion to amend its infringement contentions, Lyft can still  
28 assert breach of contract based on AGIS Software’s prior breach of the [REDACTED] in this

1 action and the E.D. Texas action. *See Reply*, ECF No. 107 at 8.

2 The Court agrees with Lyft. While AGIS Software points to some delay in Lyft asserting  
3 the breach of contract claim in this case, it appears that AGIS Software is at least partially  
4 responsible for that delay through its obstructive discovery posturing. *See Reply*, ECF No. 107  
5 at 7–8. Accordingly, the Court does not consider Lyft’s delay in bringing its breach of contract  
6 claim in this case to indicate undue delay, dilatory motive, or bad faith. *See Eminence Capital*,  
7 316 F.3d at 1052. Further, AGIS Software does not indicate the delay prejudiced it in any way.

8 Additionally, the Court finds that AGIS Software has not shown that the addition of the  
9 breach of contract claim would be futile, given AGIS Software’s pending motion to amend its  
10 infringement contentions. Lyft has adequately explained how its breach of contract claim might  
11 survive even if AGIS Software amends its infringement contentions—*i.e.*, based on AGIS  
12 Software’s prior assertion of infringement of iOS-based products in the E.D. Texas Action and the  
13 present case. *See Reply*, ECF No. 107 at 8; *Harris*, 847 F.3d at 656.

14 Accordingly, the Court GRANTS Lyft leave to add the breach of contract claim in the first  
15 amended complaint.

16 **IV. ORDER**

17 For the foregoing reasons, IT IS HEREBY ORDERED that:

18 1. Lyft’s motion to file a first amended complaint is GRANTED; and  
19 2. Lyft SHALL file its proposed first amended complaint on or before May 25, 2022.

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21 Dated: May 19, 2022



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23 BETH LABSON FREEMAN  
24 United States District Judge